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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 67

PAUL THEODORE CHEFF, PETITIONER

v.

ELMER J. SCHNACKENBERG, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the court of appeals finding petitioner in contempt (R. 15–24) is reported at 341 F. 2d 548. Its earlier opinion enforcing a Federal Trade Commission cease-and-desist order is reported at 295 F. 2d 302. The opinion of the Federal Trade Commission is reported at 55 F.T.C. 55.

JURISDICTION

The judgment of the court of appeals (R. 25–28) was entered on January 27, 1965. Motions for rehearing, vacation of judgment, acquittal, or new trial were denied on February 11, 1965. On February 15, 1965, Mr. Justice Clark extended the time for filing a petition for a writ of certiorari to and including April 12, 1965. The petition was filed on April 8, 1965, and granted on November 15, 1965, 382 U.S. 917 (R. 29–30). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether it was constitutional for the court of appeals, without the intervention of a jury, to sentence petitioner to six months' imprisonment for having violated its order enforcing a Federal Trade Commission cease-and-desist order.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Article III, Section 2 of the United States Constitution provides in pertinent part:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

18 U.S.C. 401 provides:

> A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—
>
> (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
>
> (2) Misbehavior of any of its officers in their official transactions;
>
> (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

STATEMENT

Petitioner was president and chairman of the board of the Holland Furnace Company ("Holland"), a corporation against which a Federal Trade Commission complaint issued on May 4, 1954. The complaint alleged that Holland, through its employees, was selling its products by means of false representations in

violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. On July 7, 1958, after a protracted hearing, the Federal Trade Commission found that Holland had violated the act through the use of unfair methods of competition and deceptive practices. *In the Matter of Holland Furnace Co.*, 55 F.T.C. 55. It ordered Holland "and its officers, agents, representatives, and employees" to cease and desist from (1) representing that its employees are inspectors or employees of government agencies or utility companies; (2) falsely representing that its salesmen are heating engineers; (3) falsely representing that competitors' furnaces are defective or not repairable and are likely to result in asphyxiation or fire, or that parts for such furnaces are unobtainable; (4) dismantling furnaces without the owner's permission; (5) falsely representing that the dismantled furnace could not be reassembled and used with safety; (6) requiring the furnace owner to sign a release absolving Holland of liability before reassembling a dismantled furnace; (7) refusing immediately to reassemble a dismantled furnace at the owner's request; and (8) misrepresenting the condition of any dismantled furnace (R. 2–3).

Holland thereupon filed in the Court of Appeals for the Seventh Circuit a petition to review and set aside this order. On August 5, 1959, on the Commission's motion supported by evidence showing continuation of the illegal practices during the pendency of the review proceeding, the court determined that enforcement of the Commission's order *pendente lite* was

necessary to prevent injury to the public and to petitioner's competitors. It thereupon directed Holland to comply with the Commission's order pending final judicial review (R. 3–4). On October 11, 1961, the court of appeals affirmed the Commission's decision and order. 295 F. 2d 302.[1]

In 1962, on petition of the Commission supported by affidavits relating alleged violations, the court of appeals issued an order to show cause why Holland should not be held in criminal contempt for violation of the court's order. On April 26, 1963, on petition of the attorneys appointed by the court to prosecute Holland (R. 7–9), the court issued a further order to petitioner and other officials of the corporation directing them to show cause why they should not individually be held in contempt for having "knowingly, wilfully and intentionally caused, and aided and abetted in causing" Holland to violate the court order (R. 4–5). Petitioner filed an answer denying the charge (R. 10). He also filed a demand for a jury trial, which was denied by the court of appeals after this Court's decision in *United States* v. *Barnett*, 376 U.S. 681 (R. 11–12, 14).

Pursuant to stipulation, the affidavits attached to the contempt petition and certain other documents were considered by respondents—a panel of judges of the Court of Appeals for the Seventh Circuit—in lieu of live testimony with regard to the charges

[1] Earlier, at Holland's request, the court separately determined whether the Commission had jurisdiction to enter its order. 269 F. 2d 203, certiorari denied, 361 U.S. 932.

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against Holland, which had requested judgment on the pleadings. Respondents also personally conducted a ten-day hearing dealing primarily with the complicity of petitioner and other company officials. Testimony was taken from live witnesses, and full rights of cross-examination and oral argument were allowed and exercised. On January 27, 1965, the court of appeals announced and issued its findings and conclusions of law, and entered its order fixing the punishments of those convicted. The court found beyond a reasonable doubt that Holland, through a "regular and usual" sales practice, had knowingly, wilfully and intentionally violated the order of August 1959 (R. 19). It also found beyond a reasonable doubt that petitioner knowingly, wilfully and intentionally caused and aided and abetted in causing Holland's violations; that he was Holland's dominant head until May 1962 and was well aware of the condemned sales practices and of the prohibitions of the order; and that he made no bona fide attempt to obtain compliance with the order but, instead, sought to give the appearance of compliance so as to insulate himself from liability while continuing the condemned sales practices (R. 19–22). The court sentenced petitioner to six months' imprisonment. The corporation was fined $100,000. Two officers were fined $500 each, and eight others were acquitted (R. 25–28). This court denied Holland's petition for a writ of certiorari. *Holland Furnace Co.* v. *Schnackenberg,* 381 U.S. 924.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner was convicted of having willfully violated an order of the court of appeals enforcing the determination of an administrative agency and was sentenced to six months' imprisonment. The only question before this Court is whether the failure to accord petitioner trial by jury on the contempt charge invalidates the judgment of conviction. The applicability of the constitutional jury trial guarantee to contempt proceedings has been considered by this Court on many occasions and, as recently as *United States* v. *Barnett,* 376 U.S. 681, the Court held that criminal contempt was not a "crime" within the meaning of the jury-trial guarantee of Article III and the Sixth Amendment. For reasons stated in greater detail in our brief and appendix in *Harris* v. *United States,* No. 6, this Term (382 U.S. 162), we disagree with the suggestion made in a *dictum* of some members of the Court (376 U.S. 681, 695, n. 12) that the jury-trial guarantee is applicable if the sentence exceeds that prescribed for petty offenses.

A. The principal issue remaining to be considered is whether there is any contemporary justification for departing from the settled rule that criminal contempts are triable by the court. In our combined brief in *Shillitani* v. *United States,* No. 412, this Term, certiorari granted, 382 U.S. 913, and *Pappadio* v. *United States,* No. 442, this Term, certiorari granted, 382 U.S. 916, which we have served on petitioner, we explain, in some detail, why we believe that violations of

judicial commands warrant different procedures from those applicable to violations of legislative commands. That discussion is relevant here, and we respectfully refer the Court to that brief in its consideration of the present case.

B. The problem presented by a violation of a judicial decree enforcing an agency order illustrates the policy considerations discussed in our *Shillitani* and *Pappadio* brief. Even though violations of such decrees may present issues of fact (which refusal to testify rarely does), they differ substantially from the ordinary "criminal prosecutions" contemplated by the Constitutional framers. Before there can be a contempt proceeding for violation of an administrative order, the particular conduct proscribed must be specifically defined with the assistance of counsel through agency action and court order for enforcement. This degree of administrative and judicial refinement, specificity and warning distinguishes this type of violation from an ordinary criminal prosecution and provides a safeguard against arbitrary action.

In addition, civil contempt is an inadequate means of achieving the result which Congress intended when it established the usual procedure for review and enforcement of administrative orders. Compliance with most agency orders requires future adherence to or avoidance of a course of conduct, and this cannot be policed by anticipatory coercive imprisonment in the form of civil contempt. Moreover, since civil contempt may be invoked only after the *court's* order has once

been violated, and since the agency order must, in turn, be based on an earlier violation, civil contempt can have preventive effect only upon the *third* violation of the statutory command. In order effectively to prevent a *second* violation—*i.e.*, any repetition of the conduct which resulted in the agency order—a speedy and certain sanction must be imposed in case of violation. That, we submit, calls for judicial power to deal with the violation of the court's order.

C. In light of the serious and deliberate character of the contempt, the sentence imposed in this case was clearly reasonable.

ARGUMENT

I

A CRIMINAL CONTEMPT PROCEEDING IS NOT A "CRIMINAL PROSECUTION" IN THE CONSTITUTIONAL SENSE

Our briefs in *United States* v. *Barnett*, 376 U.S. 681, No. 107, O.T. 1963, and in *Green* v. *United States*, 356 U.S. 165, No. 100, O.T. 1957, survey the decisions of this Court and the historical evidence regarding the intention of the Constitutional draftsmen with respect to the procedures to be followed in the trial of criminal contempts. This Court concluded in *Green* and *Barnett* that the consistent line of decisions and the historical proof "establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right." 356 U.S. at 183; 376 U.S. at 692.

In our brief and appendix in *Harris* v. *United States,* No. 6, this Term (382 U.S. 162), we discuss the historical evidence relating to the proposition—first suggested in a dissenting opinion in the *Barnett* case, 376 U.S. at 739–757—that "criminal contempts were tried without a jury at the time of the Constitution * * * because they were deemed a species of petty offense punishable by trivial penalties." 376 U.S. at 751–752. We submit that the proposition is historically unsound and, for reasons elaborated in our *Harris* brief (which has been served on petitioner), it does not warrant even the limited recognition accorded it by the *dictum* of some members of the Court in *United States* v. *Barnett,* 376 U.S. 681, 695, n. 12.

We believe that there are, in the administration of a legal system such as ours, sound reasons of policy to support a distinction between appropriate procedures for violations of judicial orders on the one hand and legislative commands on the other. Our combined brief in *Shillitani* v. *United States,* No. 412, this Term, and *Pappadio* v. *United States,* No. 442, this Term, contains a full discussion of the differences which, in our view, justify jury trial for statutory violations but not for disobedience of court orders. The statements of Constitutional draftsmen regarding the importance of the jury trial guarantee (several of which are quoted in petitioner's brief, pp. 7–11) must be read, in light of this distinction, as referring only to trials on charges of statutory violations. Criminal contempts are based upon disobedi-

ence of court orders and, for the reasons stated in our *Shillitani* and *Pappadio* brief (pp. 18–33)—which we consider fully applicable to this case—more immediate and certain sanctions are warranted when court orders are violated than when statutory commands are disregarded.

II

JURY TRIAL IS INAPPROPRIATE IN A CRIMINAL CONTEMPT PROCEEDING BASED ON A JUDICIALLY ENFORCED ORDER OF AN ADMINISTRATIVE AGENCY

The present case illustrates, in a setting different from *Shillitani* and *Pappadio,* how inappropriate trial by jury is in a criminal contempt proceeding. Petitioner was charged with having violated a court order which enforced, *pendente lite,* an order of an administrative agency. The judicial command which was disobeyed is typical of a large class of court orders customarily issued in those spheres of our society which Congress has committed to the control of regulatory agencies. Since the Interstate Commerce Act of 1887, many expert agencies have been created to hear and determine facts and issue orders implementing general legislative policies in particular factual situations. These agencies—such as the Federal Trade Commission, the National Labor Relations Board, the Interstate Commerce Commission, and the Federal Power Commission, among others—have no power themselves to punish disobedience of their orders. *Interstate Commerce Commission* v. *Brimson,* 154 U.S. 447. They must seek enforcement

through the courts. Consequently, after an administrative order has issued, it may be reviewed judicially in a court of appeals or a three-judge district court, and that court, if it sustains the legal and factual basis of the order, enforces it by judicial decree. Violations of agency orders do not ordinarily become subject to the contempt power until the decision of the agency has been reviewed by a court.[2] A long legal proceeding in which facts and specific issues have been determined usually precedes an enforcement order, and only if the order is thereafter violated does the question of contempt arise. In this very case, extensive hearings over a four-year period, resulting in a transcript of more than 8,000 pages, preceded the cease-and-desist order. The injunction was issued a year later on the basis of additional affidavits showing extensive violations during the pendency of the appeal.

The efficacy of this two-stage process is based, we submit, on the premise that the particularized court order, when it is ultimately issued, will inescapably be obeyed and that it will have more immediate effect than the threat of a criminal prosecution. It is the duty of the administrative agency "initially [to] apply a broad statutory term to a particular situation," and the function of the reviewing court "is limited to determining whether the [agency's] decision 'has

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[2] In this case, of course, enforcement *pendente lite* was ordered because Holland was shown to have continued the illegal practices while review was pending, and petitioner was found to have violated the interlocutory order. When the merits were considered, however, the court sustained the Commission and entered a final decree making permanent its *pendente lite* order.

"warrant in the record" and a reasonable basis in law.'" *Atlantic Refining Co.* v. *Federal Trade Commission*, 381 U.S. 357, 367. Once the court determines that the agency's order meets these standards, it must cooperate with the agency "both at the enforcement and the contempt stages in order to effectuate [the governing statute's] purposes." *National Labor Relations Board* v. *Warren Co.*, 350 U.S. 107, 112.

The statutory scheme devised by Congress for the enforcement of agency orders demonstrates that what was contemplated cannot readily be carried into effect if violations of court enforcement orders may be tried only by the procedures prescribed for ordinary criminal trials—including the right to a jury. Congress did not merely attach a criminal or civil penalty to any violation of an agency order sustained by a reviewing court. Compare, *e.g.*, 15 U.S.C. 21(l), 45(l), which prescribe a "civil penalty" for each separate violation of a Federal Trade Commission order. It chose instead to implement the agency's decision by requiring the reviewing court to enter a judicial decree which carries contempt penalties. This Court observed in *National Labor Relations Board* v. *Warren Co.*, 350 U.S. 107, 112–113, that Congress "gave the judicial remedy of contempt as the ultimate sanction to secure compliance with [agency] orders" because "so long as compliance is not forthcoming [the statute's] objective is frustrated." Criminal contempt cannot be treated as an ordinary criminal prosecution if the contempt power is to mean more

in such circumstances than a bare criminal or civil penalty would.[3]

Under established principles, an agency may enter an order such as the one involved in this case only after a violation of law has been committed. *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470. If the contempt power were to mean that a second violation, committed after enforcement had been ordered, would be treated no differently from an ordinary criminal act, the "judicial remedy of contempt" would be indistinguishable from a pure criminal sanction for violation of final agency orders. Indeed, since punishment would be imposed only after two violations had occurred, the applicable statute, in conjunction with the administrative remedy, would be substantially less effective as a deterrent than a bare criminal statute.[4] The compliance which Congress sought to secure by affording "the ultimate sanction" of contempt is surely not encouraged if the only coercion available is identical to that of a criminal statute.

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[3] See Note, *The Role of Contempt Proceedings in Enforcing Orders of the NLRB*, 54 Col. L. Rev. 603; Jaffe, *Judicial Control of Administrative Action* (1965), p. 305.

[4] The Federal Trade Commission, for example, is authorized to enter a cease-and-desist order against anyone engaged in false advertising of foods, drugs and cosmetics in interstate commerce. 15 U.S.C. 52. The content of the applicable provision is not substantially different from the content of the mail-fraud statute, 18 U.S.C. 1341, and anyone sending false advertising of the sort covered by 15 U.S.C. 52 through the mail would be subject to the criminal provision and could be punished criminally for his first violation.

Nor is civil contempt a practical alternative course "to secure compliance."[5] This Court has recognized that "whether the proceedings be civil or criminal, there must be an allegation that in contempt of court the defendant has disobeyed the order * * *." *Gompers* v. *Buck Stove & Range Co.*, 221 U.S. 418, 441. A court enforcing an agency's order against a corporation may not, in other words, immediately imprison its officers until the order is obeyed or assess civil fines for anticipated noncompliance which has not yet occurred; it must wait until a violation of the *court's* order is committed. This means that civil contempt might be an effective means of deterring a *third* violation, but it would be quite useless with regard to the *second*. Moreover, many orders do not lend themselves to effective enforcement by civil contempt. The order involved in this case, for example, imposes a duty to refrain from certain conduct. The court could hardly imprison the corpo-

[5] There is no merit whatever to petitioner's contention (Br. 11–15) that criminal contempt is unavailable when the order allegedly violated is one enforcing an administrative agency's order. The offense committed is the violation of the *court's* order, and the evidentiary rules which governed the proceedings underlying that order do not limit the permissible remedy for its violation. Neither *National Labor Relations Board* v. *Mastro Plastics Corp.*, 261 F. 2d 157 (C.A. 2), which involved a situation in which the court of appeals believed civil contempt to be an adequate remedy, nor any other decision cited by petitioner supports the claim that criminal contempt powers may not be invoked. In any event, the contention that criminal contempt could not be used in these circumstances is not comprehended by the question to which this Court limited its grant of certiorari (R. 29).

ration's officers to assure future compliance with an order having indefinite duration.

The efficacy of the contempt sanction is its threat of prompt and certain enforcement, and it is that threat which coerces compliance. Neither civil contempt—which, in the case of agency orders, is inoperative before the third violation and may often be ineffective—nor an ordinary criminal sanction involving standard criminal procedures can insure the compliance necessary to carry out the governing statute's objective. Criminal contempt proceedings conducted by the court provide the sure and prompt remedy which is appropriate in such circumstances.

Those who are accused of having violated judicial enforcement orders in situations of this sort cannot really complain of summary procedures. Unlike ordinary criminal defendants, they have had the opportunity of refining, in administrative and judicial proceedings, the legal and factual issues underlying the duty imposed upon them by law. They have been represented by counsel during these initial stages and have been able to interpose, at no risk whatever, such personal defenses and circumstances peculiar to their own situations as they deem relevant. They have been personally ordered to conduct themselves in a specific manner,[6] and have had the opportunity—before being placed under a legal obligation to obey—to test the legal sufficiency of the order which im-

[6] It is true here that the Commission proceedings were instituted solely against Holland and that petitioner was not a party to the administrative proceeding or to the original proceeding in the court of appeals. But petitioner was its president and chairman of its board of directors. As this Court has

poses the duty upon them. If they entertained doubts as to the meaning of an order, they have been able to seek clarification from the courts. *Regal Knitwear Co.* v. *National Labor Relations Board*, 324 U.S. 9, 15. When charged with contemptuous violation of the court order they have the right, which petitioner in this case exercised, to a hearing before the court as plenary in every respect as in a criminal prosecution, except for the presence of a jury. In sum, a criminal prosecution is significantly different from criminal contempt proceedings pursuant to judicial enforcement of an administrative order. In the latter situation, the only open question is whether the order was disobeyed; the detailed application of the law to the facts has been litigated and conclusively determined. The substantially greater degree of specificity and warning distinguishes the contempt situation from an ordinary "criminal prosecution" and provides a safeguard against the dangers which trial by jury is intended to forestall.

It is also evident that in relying upon the courts of appeals to enforce their own orders through contempt proceedings, Congress did not contemplate a jury trial. Courts of appeals are not designed for jury

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said in a different context: "A command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs. If they, apprised of the writ directed to the corporation, prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt." *Wilson* v. *United States*, 221 U.S. 361, 376. Even a cursory reading of this record shows that the court of appeals was fully justified in finding deliberate violation by petitioner personally.

trials. If juries were constitutionally required in these cases, jury machinery would have to be created or, at best, adapted from that used by the district courts. This would probably involve a serious disruption of the appellate court's usual business. This case strikingly illustrates, as well, that if issues of fact exist, they must be determined with awareness of the facts underlying the violated order. It is both unseemly and unsound to permit an order issued by an administrative agency and approved by a court of appeals to depend, for effective enforcement, upon the votes of twelve jurors, one of whom may be unsympathetic or unable to understand the underlying facts.

Nor does an alleged contemnor in such a situation face a single judge acting as "lawmaker, prosecutor, judge, jury and disciplinarian." He is tried by a three-judge panel which is neither a lawmaker nor a prosecutor. The court need not be in sympathy with the underlying order; its duty is to enforce it if it meets the legal standards. In these circumstances, it cannot be accused of having prejudged the question of guilt. More so even than when the order is a discretionary one with the Court, as it was in *United States* v. *Shipp,* 203 U.S. 563, can it be said that (203 U.S. at 574, Holmes, J.): "The court is not a party. There is nothing that affects the judges in their own persons. Their concern is only that the law should be obeyed and enforced, and their interest is no other than that they represent in every case."

We also note that Congress may, in the exercise of its legislative judgment, protect against abuses

by providing a different procedure. In this area, Congress has not been blind to possibilities of abuse; it has often defined and limited the contempt power. The actions of a single judge prompted a restriction in 1831 on the nature of acts punishable as contempt (4 Stat. 487). The abuse of labor injunctions led to further limitation in the Clayton Act in 1914 (38 Stat. 738) and in the Norris-LaGuardia Act in 1932 (47 Stat. 70).[7] Congress obviously has not felt that the contempt power has been abused in judicial enforcement of agency action. The method utilized has the sanction of over one hundred and fifty years of history, and it is consistent with constitutional protections for "criminal prosecutions."

III

PETITIONER'S SENTENCE IS REASONABLE

A majority of the Justices agreed in *Barnett,* 376 U.S. 695, n. 12, that a six months' sentence for criminal contempt—being a "penalty provided for petty of-

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[7] Until 1924, there was doubt that a jury could be required in a contempt case because it was feared that "there would be no power to enforce [the court's] order if they were disregarded in such independent investigation." *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 450. These doubts were set to rest in *Michaelson* v. *United States*, 266 U.S. 42, which held that the Clayton Act, in requiring a jury trial for certain specified contempts did not materially interfere with the inherent contempt power of the court. This Court held that a jury trial might be made mandatory in a contempt case provided that "the attributes which inhere in that power and are inseparable from it" are neither "abrogated nor rendered practically inoperative." 266 U.S. at 66.

fenses" by 18 U.S.C. 1—would not, in their view, encounter constitutional objection. It may therefore be said that the sentence in the instant case is constitutionally permissible even under the more restrictive view of the contempt power to which some members of that majority subscribed.

We do not rest, however, on the proposition that the sentence here is constitutionally permissible because its duration is six months. We believe that the fundamental issue would not be different if the imprisonment had been for one month or for one year. We doubt, as explained at length in the government's brief in the *Harris* case, that there is a true analogy, whether the matter is viewed historically or in terms of the relevant policy considerations, between a deliberate and serious contempt on the one hand and a typical petty offense on the other. We are mindful, moreover, that this Court has held that an offense (reckless driving) which was punishable by no more than 30 days' imprisonment could not be regarded as a petty offense in the constitutional sense because the charge was one characterized by moral delinquency. *District of Columbia* v. *Colts*, 282 U.S. 63.* So far as

* It has consistently been the Court's view that whether an offense amounts to a "crime" in the constitutional sense or is merely a "petty offense" for which no jury is required depends "primarily upon the nature of the offense." *District of Columbia* v. *Colts*, *supra*, at 73. Neither the fact that the maximum punishment authorized by the statute is not severe nor the fact that the defendant actually was given a minor penalty is sufficient of itself to remove the offense involved from the constitutional category of "crimes." See *Callan* v. *Wilson*, 127 U.S.

the constitutional issue is concerned, our reliance remains with the proposition, accepted throughout the entire course of this nation's history, that contempt is not a crime in the sense of Article III or of the Sixth Amendment.

So saying, we do not imply that this Court should not exercise (as it has done in times past) its reviewing power in order to determine in a particular case whether the sentence imposed for a contempt is excessive. And in this respect, of course, it is relevant to consider that Congress has regarded a six months' sentence as permissible even in the case of a petty offense. 18 U.S.C. 1(3).*

On the facts found by the court of appeals in the instant case, the contempt was both deliberate and serious. Petitioner was deeply implicated in a calculated effort to evade an order which had its origin in commercial practices that, by any standard, were thoroughly sordid, reprehensible and injurious to the public. Accordingly, we have no doubt of the reasonableness of the sentence and believe that there is no need to elaborate upon the underlying facts as made manifest in the opinions of the administrative agency and of the reviewing court.

540; *Schick* v. *United States*, 195 U.S. 65; *District of Columbia* v. *Clawans*, 300 U.S. 617.

* It may also be noted that the contempt sentence imposed upon the Holland corporation (*Holland Furnace Co.* v. *Schnackenberg*, 341 F. 2d 548, certiorari denied, 381 U.S. 924) was far in excess—indeed, some two hundred times in excess—of the $500 fine described in 18 U.S.C. 1 as the limit for petty offenses.

CONCLUSION

It is respectfully submitted that the judgment below should be affirmed.

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FEBRUARY 1966.

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*In lieu of the Solicitor General, who has disqualified himself.

**The above-named attorneys of the Federal Trade Commission were appointed to prosecute this case on behalf of the court of appeals.

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